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7 **BEFORE THE POLLUTION CONTROL HEARINGS BOARD**
8 **STATE OF WASHINGTON**

9 PUGET SOUNDKEEPER ALLIANCE;
10 WASTE ACTION PROJECT;
11 WASHINGTON PUBLIC EMPLOYEES
12 FOR ENVIRONMENTAL
13 RESPONSIBILITY; RESOURCES FOR
14 SUSTAINABLE COMMUNITIES;
15 CITIZENS FOR A HEALTHY BAY;
16 and WASHINGTON
17 ENVIRONMENTAL BALANCE, INC.,

18 and

19 THE BOEING COMPANY,

20 and

21 SNOHOMISH COUNTY,

22 Appellants,

23 v.

24 STATE OF WASHINGTON,
25 DEPARTMENT OF ECOLOGY, and
26 TOM FITZSIMMONS, its Director,

Respondent,

and

ASSOCIATION OF WASHINGTON
BUSINESS,

Intervenor.

PCHB No. 02-162

Consolidated with

PCHB No. 02-163

PCHB No. 02-164

**STIPULATION AND AGREED
ORDER OF DISMISSAL**

COMES NOW Appellants, The Boeing Company, by and through its attorney, Peter E. Hapke, Snohomish County, by and through its attorneys, Shelley E. Kneip and Sean K. Howe; Respondent, State of Washington, Department of Ecology ("Ecology"), by and through its attorneys, Christine O. Gregoire, Attorney General, and Ronald L. Lavigne, Assistant Attorney General; and Intervenor, Association of Washington Business ("AWB"), by and through its attorneys, Robert R. Davis, Jr. and Mark J. Asplund, and agree to the entry of this Stipulation and Agreed Order of Dismissal in the form attached.

STIPULATION

1. Not later than July 23, 2003, Ecology shall submit to the code reviser's office for publication in the August 6th edition of the Washington State Register the policy statement attached hereto as Exhibit A ("Policy Statement") in accordance with RCW 34.05.230. In the description of the Policy Statement submitted to the code reviser for publication in the Washington State Register, Ecology shall include a reference to the fact that the Policy Statement relates to the Stormwater Management Manual for Western Washington. If Ecology decides to revise or withdraw the Policy Statement it shall do so in accordance with the provisions of RCW 34.05.230. Ecology will also make a good faith effort to provide prior notice to the parties to this Agreement of its intent to revise or withdraw the Policy Statement.

2. Not later than August 30, 2003, Ecology shall cause copies of the Policy Statement to be sent to all cities and counties within Western Washington (bounded on the south by the Columbia River, on the west by the Pacific Ocean, on the north by the Canadian border, and on the east by the Cascade Mountains crest); and all appropriate Ecology employees.

3. Reasonably promptly following the publication of the Policy Statement in the State Register, Ecology shall publish said Policy Statement on Ecology's website, linked to the Manual. Ecology shall provide the Policy Statement to any person or entity who requests a copy of the Manual subsequent to the adoption of the Policy Statement.

1 4. Not later than thirty (30) days after the Industrial Stormwater Permit is
2 reissued, Ecology shall publish a list of all currently approved technical guidance manuals on
3 Ecology's website linked to Section S9 of the Permit and linked to the Policy Statement.

4 5. No later than August 30, 2003, Snohomish County will dismiss with prejudice
5 its action regarding the Industrial Stormwater General Permit and the Stormwater
6 Management Manual for Western Washington which is currently before the Snohomish
7 County Superior Court as Cause Number 02-2-09516-8. AWB will withdraw from the
8 Snohomish County Superior Court action, and no party to this agreement will contest
9 Snohomish County's dismissal or AWB's withdrawal.

10 6. The parties to this agreement stipulate that the language in Exhibit B will
11 constitute settlement of issue numbers 2 and 3 in the Board's Pre-Hearing Order.

12 7. The parties to this agreement stipulate that the language in Exhibit C will
13 constitute settlement of issue number one in the Boards Pre-Hearing Order.

14 8. The parties to this agreement stipulate that unless the first application for
15 coverage is received after a TMDL is completed, the TMDL requirements associated with
16 TMDLs completed after the issuance date of the permit will only become effective if they are
17 imposed through an administrative order or some other appealable document issued by
18 Ecology. When Ecology modifies the Industrial Stormwater General Permit pursuant to
19 Paragraph 9 below, Ecology will incorporate language into the proposed modified permit
20 clarifying that TMDLs completed after the permit is issued or coverage under the permit is
21 obtained, which ever is later, are not automatically applicable unless imposed through the
22 issuance of an administrative order or some other appealable document.

23 9. Not later than 90 days after all outstanding appeals associated with this current
24 appeal, Ecology will commence a major permit modification to incorporate the language in
25 Exhibits B and C into the Industrial Stormwater General permit. The Modified Industrial
26 Stormwater General Permit will be modified in accordance with the provisions of

1 ch. 173-226 WAC and 40 C.F.R. Part 122.62 and 124.5. If the modified permit does not
2 include the language in Exhibits B and C, the parties to this stipulation reserve their right to
3 appeal the amended permit.

4 10. The undersigned representatives certify that they are fully authorized by the
5 party whom they represent to enter into the terms and conditions of this Stipulation and Agreed
6 Order of Dismissal and legally to bind such party thereto. The undersigned parties consent to
7 the submission of this Stipulation and Agreed Order of Dismissal to the Pollution Control
8 Hearings Board for approval and entry.

9
10 STATE OF WASHINGTON
11 DEPARTMENT OF ECOLOGY

THE BOEING COMPANY

12
13 By: _____

By: _____

14 Dated: _____

Dated: _____

15 SNOHOMISH COUNTY

ASSOCIATION OF WASHINGTON
BUSINESS

16
17 By: _____

By: _____

18 Dated: _____

Dated: _____

19 **Approved as to form and content:**

20 CHRISTINE O. GREGOIRE
21 Attorney General

THE BOEING COMPANY

22
23 RONALD L. LAVIGNE, WSBA #18550
Assistant Attorney General
24 Attorney for Respondent

PETER E. HAPKE, WSBA #23159
Attorney for Appellant
The Boeing Company

25 Dated: _____

Dated: _____

26 JANICE E. ELLIS
Snohomish County Prosecuting Attorney

LANE POWEL SPEARS LUBERSKY
LLP

SEAN K. HOWE, WSBA #23329
SHELLEY E. KNEIP, WSBA #22711
Attorneys for Appellant
Snohomish County

ROBERT R. DAVIS, JR., WSBA #02070
MARK J. ASPLUND, WSBA # 29076
Attorneys for Intervenor
Association of Washington Business

Dated: _____

Dated: _____

AGREED ORDER OF DISMISSAL

Having reviewed the foregoing Stipulation and the file and pleadings herein, and it appearing that the parties have reached an agreement;

IT IS HEREBY ORDERED that the foregoing Stipulation is entered as an ORDER of this Board and legal issue numbers 1, 2, 3 and 4 from the Board's pre-hearing Order in this case, *Puget Soundkeeper Alliance, et al. v. Ecology*, PCHB Nos. 02-162, 02-163 and 02-164 are hereby DISMISSED with prejudice to the parties signing this agreement and without costs or attorneys fees.

DATED this ____ day of _____, 2003.

POLLUTION CONTROL HEARINGS BOARD

ROBERT V. JENSEN, Presiding

KALEEN COTTINGHAM, Member

WILLIAM H. LYNCH, Member

**Approved as to form;
Notice of presentation waived:**

THE BOEING COMPANY

PETER E. HAPKE, WSBA #23159

1 Attorney for Appellant
The Boeing Company

2 JANICE E. ELLIS
3 Snohomish County Prosecuting Attorney

4
5 SEAN K. HOWE, WSBA #23329
SHELLEY E. KNEIP, WSBA #22711
6 Attorneys for Appellant
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7 ASSOCIATION OF
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8 LANE POWEL SPEARS LUBERSKY LLP

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10 ROBERT R. DAVIS, JR., WSBA #02070
11 MARK J. ASPLUND, WSBA # 29076
Attorneys for Intervenor
12 Association of Washington Business

13 **Presented by:**

14 CHRISTINE O. GREGOIRE
Attorney General

15
16 RONALD L. LAVIGNE, WSBA #18550
17 Assistant Attorney General
Attorney for Respondent